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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,737	09/17/2003	Alan Phillips	PTG 02-103-13	4693
23531	7590	12/08/2005	EXAMINER	
SUITER WEST SWANTZ PC LLO 14301 FNB PARKWAY SUITE 220 OMAHA, NE 68154			TRUONG, THANH K	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 12/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/665,737	Applicant(s) PHILLIPS ET AL.	
	Examiner Thanh K. Truong	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 27, 42 and 53 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 27, 42 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| <ul style="list-style-type: none"> 1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | <ul style="list-style-type: none"> 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____ |
|---|---|

DETAILED ACTION

1. This action is in response to applicant's amendment received on September 19, 2005.
2. Applicant's cancellation of claims 1-14, 16-26, 28-41, 43-52 and 54 is acknowledged.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15, 27, 42 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (6,431,428) in view of Hou (5,653,371).

Chen discloses an apparatus comprising:

a housing (20) including a first end and a second end, the housing for storing nails (50) and providing nails to the nail driving assembly of the nail gun, the first end of the housing for pivotally coupling with the nail driving assembly (column 2, lines 16-21);

a handle (12) including a first end and a second end, the second end coupled with a fastening assembly (figures 1-3);

an adjustment assembly (13, 22, 23, 132) disposed proximal to the second end of the housing, the adjustment assembly for affixing the position of the housing relative to the nail gun (column 1, lines 29-41);

an adjustable angle magazine (20) including a side, a first end for pivotally coupling with the adjustable angle nose casting assembly (figures 1-3 and column 1, lines 35-39), and

an adjustable angle nose casting assembly (the barrel 16 assembly) couple with the nail driving assembly (10), the adjustable angle nose casting assembly for receiving the nail and enabling the operational engagement of the driver blade with the nail (column 2, lines 12-13);

Chen discloses the claimed invention, but does not expressly disclose a side loading mechanism disposed on the side of the cover and the cover removably coupled with the adjustable angle magazine (as in claims 15 and 42).

Hou discloses an apparatus comprising: a side loading mechanism disposed on the side of the cover (figure 1, column 1, lines 10-14), and the cover (11) is removable from the housing (figure 1 shows that the cover of the housing is removable from the housing). Hou's mechanism enables the user to remove the cover of the magazine, to load the nails into the magazine from the side of the magazine and to cover the nails when it is in operation providing safety protection for the user.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified Chen's apparatus by incorporating the side loading means and the removable cover as taught by Hou providing the nails loading flexibility to the hand tool and the safety protection of the removable magazine cover.

Chen further discloses: the nail gun is a pneumatic nail gun (abstract).

Response to Arguments

5. Applicant's arguments filed September 19, 2005 have been fully considered but they are not persuasive.

6. In response to the Applicant's argument that:

"Hou does not teach that the magazine includes a removable cover for providing protection to the adjustable angle magazine, as claimed in the present invention. Further, Hou does not teach that a side loading mechanism is disposed on a side of the removable cover for enabling loading of nails through a side of the cover and into the magazine, as claimed in the present invention."

the examiner respectfully disagrees.

As discussed above in paragraph 4 of this office action, Hou, in figure 1 and column 1, lines 10-14, clearly discloses the removable cover (11) to the magazine (1). Hou's magazine is not an adjustable magazine, but Hou is relied upon for the teaching of the removable cover of the magazine and the side loading magazine.

7. Applicant's arguments with respect to claim 15 and 42 regarding to Hou's side plates (41, 42) in figure 5 have been considered but are moot in view of the new ground(s) of rejection.

To make the record clear, the examiner relied upon the figure 1 of Hou's disclosure for the teaching of the removable magazine cover and the side loading magazine. As the Applicant removed the top loading limitation from the claims 15 and 42, figure 5 of Hou is not being relied upon for the rejection of claims 15 and 42.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3721

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tkk
December 4, 2005.



Stephen F. Gerrity
Primary Examiner